that of the offeree, if any, and his conscience cannot be charged by his mere knowledge that a revocable offer was outstanding when he made his agreement with the offerer, yet the cases test the validity of the acceptance, for under modern practice equity can award damages where it is impossible to grant specific performance. This was not done, the court in each instance granting no relief whatever, placing its decision on the broad ground that the attempted acceptance, after knowledge of the negotiation or sale, was ineffectual, and that no contract was formed.

In support of the holding of the above cases, this argument is made: the legal fiction that an offer is repeated during every moment from the time it leaves the offerer until revocation or acceptance, amounts to a presumption raised at the moment of acceptance that justifies the offeree in assuming that the offerer is still of the same mind. This presumption, however, cannot be raised when the contrary is known to the offeree to be the fact. Again, when the offerer knows that knowledge of the sale is reasonably certain to reach the offeree, as proves to be the fact, and when the offeree as a reasonable man must understand such notice as revocation of the offer, why require the offerer to say in so many words, "I revoke my offer"? Is it not enough to put upon him the risk of having two contracts on his hands in case his expectation of notice reaching the offeree is not realized?

Both theoretically and practically, however, it would seem that the authority on this point is open to serious objection. An offer which comes to the offeree indirectly, through the casual report of a third person, cannot be so accepted as to impose a binding contract on the offerer;[8] and a revocation should in principle be subject to the same rule. Moreover, as a practical matter, in order to compel the offeree to rely upon the information, must it be absolute knowledge of a completed sale, or is mere notice of pending negotiations sufficient? Suppose the information is false but believed to be true; or true but reasonably believed to be false; or wholly uncertain and indefinite; in any case the offeree is placed in a doubtful and embarrassing situation. All of these difficulties could easily be obviated by requiring in every case that the revocation be directly communicated.

ESTOPPEL THROUGH FAILURE TO ACT. — Under the law of estoppel duties are imposed, liability for the breach of which, though it does not subject the wrong-doer to any direct action, is none the less rendered effective in that he is prevented from asserting a right which he otherwise would have had. A case decided recently in the Supreme Court of Canada seems to go very far in imposing a duty of this kind. The defendant, living in Montreal, received a notice from the plaintiff, a stranger living in Toronto, asking him to provide payment against a note of his in the plaintiff's hands. In a suit on the note, the court held that since the defendant did not telegraph at once that the note was a forgery and thus save the plaintiff loss from paying out the proceeds which had been placed to the credit of the party discounting the note, the defendant is estopped to assert the forgery. *Ewing* v. *Dominion Bank*, 40 Can. L. J. 468.

It is fairly well settled that in case A stands by and sees B sell A's land

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[8] Canney *v.* South, etc., R. R. Co., 63 Cal. 501.

to C, A is estopped from subsequently asserting his title to C's damage.[1] The principal case seems indistinguishable. Both cases agree in imposing a duty to give notice, a duty to speak the truth.

Whence arises this duty and what are its limits? In the absence of privity the law hesitates to impose upon a man a duty to act, and in these cases we have no privity. At first sight the obligation seems based upon a duty, purely moral, to save another from harm. Yet, clearly, if one hears casually that a note to which his signature has been forged is being sold to a stranger, he will not suffer any liability through a failure to warn the stranger.[2] The moral obligation to speak does not become a legal one when silence will merely mean that another is not helped, but only when another, who is rightfully relying on the representation, will be injured by such silence. Where A knows that B, in a matter in which both are interested is acting or going to act in the ordinary course of affairs with reference to his, A's, conduct, and in the reasonable belief that that conduct represents the truth, then A should take care that his conduct does represent the truth. If he allows his conduct to represent a falsehood, and B relying thereon, changes his position, then A will not be allowed subsequently to set up what is true to B's damage. To permit A to do so would be to sanction a fraud. Therefore the courts decide in such a case that if a party wishes to preserve to himself a right at some later day to set up the truth, there is a present obligation upon him to act truthfully.[3]

In the principal case the conduct which the plaintiff had a reasonable right to expect from the defendant, both being business men, was conduct in accordance with business custom. The business custom in these cases is to reply in due course of post. A rule, therefore, requiring a telegram hardly seems supportable. But with that exception, the decision seems a salutary one. The growth in the size and intricacy of business enterprises makes it increasingly necessary to place confidence in the conduct of strangers. And within the narrow limits of the rule laid down, it seems well to strictly enforce truthfulness of conduct by way of estoppel.

RECOVERY UNDER THE CODE ON CONTRACTS FOR THE BENEFIT OF THIRD PERSONS. — A recent article makes the assertion that the code provision allowing the real party in interest to sue, settles conclusively the question of recovery by the beneficiary under a contract made between other parties for his benefit. *Suits on Contracts for the Benefit of Third Persons*, M. E. E. Kerr, 66 Alb. L. J. 312. The statement, moreover, is one that is frequently met.[1] That it in fact has not had this effect is shown by the state of the law on this subject in code states. When recovery has been allowed, it has frequently in code states, as in others, been based wholly on the general law and not at all on the code provision.[2] In some code states, however, the decisions have been put on the latter ground.[3] The reason

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[1] Wendell *v.* Van Rensselaer, 1 Johns. Ch. (N.Y.) 344; Osborn *v.* Elder, 65 Ga. 360.
[2] See Bigelow, Estoppel, 5th ed., 596 et seq.
[3] See Blackburn, J., in Swan *v.* North British Australasian Co., 2 H. & C. 175, 182; see Cababé, Estoppel, Appendix.

[1] 7 Am. & Eng. Enc. 109; 15 Enc. Pl. & Pr. 717.
[2] Emmitt *v.* Brophy, 42 Oh. St. 82; Larson *v.* Cook, 85 Wis. 564.
[3] Rice *v.* Savery, 22 Ia. 470; Ellis *v.* Harrison, 104 Mo. 270.